



**DEPARTMENT OF TRANSPORTATION**

**[4910-22-P]**

**Federal Highway Administration**

**23 CFR Part 450**

**Federal Transit Administration**

**49 CFR Part 613**

**[Docket No. FHWA-2016-0016; FHWA RIN 2125-AF68; FTA RIN 2132-AB28]**

**Metropolitan Planning Organization Coordination and Planning Area Reform**

**AGENCY:** Federal Highway Administration (FHWA), Federal Transit Administration (FTA); U.S. Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FHWA and FTA propose revisions to the transportation planning regulations to promote more effective regional planning by States and metropolitan planning organizations (MPO). The goal of the proposed revisions is to result in unified planning products for each urbanized area (UZA), even if there are multiple MPOs designated within that urbanized area. Specifically it would result in MPOs developing a single metropolitan transportation plan, a single transportation improvement program (TIP), and a jointly established set of performance targets for the entire urbanized area and contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan. If multiple MPOs are designated within that urbanized area, they would jointly prepare these unified planning products. To accomplish this, the proposed revisions clarify that the metropolitan planning area must include the entire urbanized area and contiguous area expected to become urbanized within 20 years.

These proposed revisions would better align the planning regulations with statutory provisions concerning the establishment of metropolitan planning area (MPA) boundaries and the designation of MPOs. This includes the statutory requirement for the MPA to include an urbanized area in its entirety, and the exception provision to allow more than one MPO to serve a single MPA if warranted by the size and complexity of the MPA. The rulemaking would establish clearer operating procedures, and reinstate certain coordination and decisionmaking requirements for situations where there is more than one MPO serving an MPA. The proposed rule includes a requirement for unified planning products for the MPA including jointly established performance targets within an MPA, and a single metropolitan transportation plan and TIP for the entire MPA in order to result in planning products that reflect the regional needs of the entire urbanized area. These unified planning products would be jointly developed by the multiple MPOs in such MPAs where more than one MPO is designated. The FHWA and FTA propose to phase in implementation of these proposed coordination requirements and the proposed requirements for MPA boundary and MPO boundaries agreements over 2 years.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

**ADDRESSES:** Mail or hand deliver comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at <http://www.regulations.gov>, or fax comments to (202) 493-2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the

above address from 9 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

### **Electronic Access and Filing**

This document and all comments received may be viewed online through the Federal eRulemaking portal at <http://www.regulations.gov>. The Web site is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at:

<https://www.federalregister.gov> and the Government Printing Office's Web site at:

<http://www.gpo.gov>.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Mr. Harlan W. Miller, Planning Oversight and Stewardship Team (HEPP-10), (202) 366-0847; or Ms. Janet Myers, Office of the Chief Counsel (HCC-30), (202) 366-2019. For FTA: Ms. Sherry Riklin, Office of Planning and Environment, (202) 366-5407; Mr. Dwayne Weeks, Office of Planning and Environment, (202) 493-0316; or Mr. Christopher Hall, Office of Chief Counsel, (202) 366-5218. Both agencies are located at 1200 New Jersey Avenue, SE.,

Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., ET for FHWA, and 9 a.m. to 5:30 p.m., ET for FTA, Monday through Friday, except Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

### **I. Summary**

This regulation proposes to improve the transportation planning process by strengthening the coordination of MPOs and States and promoting the use of regional approaches to planning and decisionmaking. The proposed rule would emphasize the importance of applying a regional perspective during the planning process, to ensure that transportation investments reflect the needs and priorities of an entire region.

Recognizing the critical role MPOs play in providing for the well-being of a region, this proposed rule would strengthen the voice of MPOs in the transportation planning process.

This proposed rule would revise the regulatory definition of “metropolitan planning area” (MPA) to better align with the statutory requirements in 23 U.S.C. 134 and 49 U.S.C. 5303.<sup>1</sup> Specifically, the proposed rule would amend the definition of MPA in 23 CFR 450.104 to include the conditions in 23 U.S.C. 134(e)(2) that require the MPA, at a minimum, include the entire urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan. By aligning the regulatory definition of the MPA with the statute, the proposed rule would acknowledge that the MPA is dynamic. The MPA is the basic geographic unit for

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<sup>1</sup> For simplicity, the remainder of this NPRM refers only to the planning provisions codified in title 23, although similar provisions also are codified in chapter 53 of title 49.

metropolitan planning; therefore this requirement will ensure that planning activities consider the entire region of the urbanized area consistently.

An exception in 23 U.S.C. 134(d)(7) allows multiple MPOs to be designated within a single MPA if the Governor and MPO determine that the size and complexity of the area make multiple MPOs appropriate; the proposed rule would establish certain requirements applicable in such instances where multiple MPOs serve a single MPA. It would also establish certain requirements applicable in such instances where an MPO's urbanized area spreads into the MPAs of neighboring MPOs. First, the proposed rule would clarify that MPA boundaries are not necessarily synonymous with MPO boundaries. Second, the proposed rule would amend § 450.310(e) of the regulation to clarify that, where more than one MPO serves an MPA, the Governor and affected MPOs will establish or adjust the boundaries for each MPO within the MPA by agreement. Third, the proposed rule would establish additional coordination requirements for areas where multiple MPOs are designated within the MPA. Under the proposed rule, the Governor and MPOs would determine whether the size and complexity of the MPA make the designation of multiple MPOs appropriate; if they determine it is not appropriate then the MPOs would be required to merge or adjust their jurisdiction such that there is only one MPO within the MPA. If they determine that designation of multiple MPOs is appropriate, then the MPOs may remain separate, with separate boundaries of responsibility within the MPA, as established by the affected MPOs and the Governor. However, the proposed rule would require those multiple separate MPOs to jointly develop unified planning products: a single long range plan (referred to as the

metropolitan transportation plan), a single TIP, and a jointly established set of performance targets for the MPA.

The requirement for unified planning products also applies to urbanized areas that cross State lines. In multistate urbanized areas, the Governors and MPOs designated within the MPA must jointly determine whether the size and complexity of the MPA warrant designation of more than one MPO and must jointly develop unified planning products.

These requirements for a single planning process and a single metropolitan transportation plan to accommodate the intended growth of a region will enable individuals within that region to better engage in the planning process and facilitate their efforts to ensure that the growth trajectory matches their vision and goals. In order to support the development of these single documents, the MPOs would be required to establish procedures for joint decisionmaking, including a process for resolving disagreements.

Additionally, the proposed rule seeks to strengthen the role that MPOs play in the planning process by requiring States and MPOs to agree to a process for resolving disagreements and including that process in the documentation reviewed by FHWA and FTA when they make a planning finding under 23 U.S.C. 135(g)(8). The planning finding is a determination on whether the transportation planning process through which statewide transportation plans and programs are developed is consistent with 23 U.S.C. 134-135.

These proposed changes to the planning regulations are designed to facilitate metropolitan and statewide transportation planning processes that are more efficient, more comprehensible to stakeholders and the public, and more focused on projects that address critical regional needs. The proposed rule would help position MPOs to respond to the growing trend of urbanization. It would better align the planning processes with the regional scale envisioned by the performance-based planning framework and particularly those measures focused on congestion and system performance. The proposed rule also would help MPOs to achieve economies of scale in planning by working together and drawing on a larger pool of human, material, financial, and technological resources.

**Table of Key Changes Proposed by the NPRM**

Proposed Change	Description	Key Regulatory Sections
Metropolitan Planning Area (MPA) boundaries	The metropolitan planning area shall include—at a minimum—the entire urbanized area plus any contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan.	450.104 (Definitions) 450.312 (Metropolitan planning area boundaries)
Determination that more than one MPO in an MPA is appropriate	If after the publication of this rule or the release of the Decennial Census, there is more than one MPO designated within a single MPA, the Governor and MPO must determine whether the size and complexity of the MPA make designation of more than one MPO appropriate. If they determine it is not appropriate, those MPOs would be required to merge.	450.310 (MPO designation and redesignation)
Coordination for multiple MPOs within an MPA	Where multiple MPOs are designated within a metropolitan planning area, they shall jointly develop the metropolitan transportation plan, TIP, and performance targets for the MPA. Additionally, the MPOs shall establish procedures for joint decisionmaking as well as a process for resolving disagreements.	450.104 (Definitions) 450.306 (Scope of the metropolitan transportation planning process) 450.324 (Development and content of the metropolitan transportation plan) 450.326 (Development and content of the TIP)
Coordination of planning process activities between State and MPO	States and MPOs shall maintain a current planning agreement, including a process for resolving disagreements. States and MPOs shall coordinate on information, studies, or analyses within the MPA.	450.208 (Coordination of planning process activities)



## **II. Background**

### **MPA and MPO Boundaries**

The metropolitan planning statute defines an MPA as “the geographic area determined by agreement between the metropolitan planning organization for the area and the Governor under subsection [134](e)” 23 U.S.C. 134(b)(1). The agreement on the geographic area is subject to the minimum requirements contained in 23 U.S.C. 134(e)(2)(A), which states that each MPA “shall encompass at least the existing urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan”.

The MPA and MPO provisions in 23 U.S.C. 134 make it clear that the intent for a typical metropolitan planning structure is to have a single MPO per urbanized area. However, the statute does create an exception in 23 U.S.C. 134(d)(7), which provides that more than one MPO may be designated within an existing MPA only if the Governor and the existing MPO determine that the size and complexity of the existing MPA make designation of more than one MPO for the area appropriate. Section 134(d)(7) reinforces the interpretation that the norm envisioned by the statute is that urbanized areas not be divided into multiple planning areas.

In 1991, the Intermodal Surface Transportation Efficiency Act was enacted with provisions intended to strengthen metropolitan planning. In particular, the law gave MPOs responsibility for coordinated planning to address the challenges of regional congestion and air quality issues. This enhanced planning role for MPOs was defined in the 1993 planning regulation, which was written to carry out these changes to statute.

The 1993 planning regulation described a single coordinated planning process for the metropolitan planning area (MPA) resulting in a single metropolitan transportation plan for the MPA. In several locations, the 1993 regulation recognized the possibility of multiple MPOs within a single MPA and provided expectations for coordination, which included an overall transportation plan for the entire area. (See 58 FR 58040, October 28, 1993). The 1993 regulation stated in the former § 450.310(g) that “where more than one MPO has authority within a metropolitan planning area or a nonattainment or maintenance area, there shall be an agreement between the State departments(s) of transportation and the MPOs describing how the processes will be coordinated to assure the development of an overall transportation plan for the metropolitan planning area.” Further, that regulation stated in former § 450.312(e) that where “more than one MPO has authority in a metropolitan planning area... the MPOs and the Governor(s) shall cooperatively establish the boundaries of the metropolitan planning area... and the respective jurisdictional responsibilities of each MPO.” In practice, however, many MPOs interpreted the MPA to be synonymous with the boundaries of their MPO’s jurisdiction, even in those areas where multiple MPOs existed within a single urbanized area, resulting in multiple “MPAs” within a single urbanized area.

In 2007, the FHWA and FTA updated the regulations to align with changes made in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users and its predecessor, the Transportation Equity Act for the 21st Century. The revised regulations reflected the practice of having multiple “MPAs” within a single urbanized area, although the statute pertaining to this issue had not changed. The 2007

regulation refers to multiple MPOs within an urbanized area rather than multiple MPOs within an MPA, and the term “MPA” was used to refer synonymously to the boundaries of an MPO. The regulations stated “if more than one MPO has been designated to serve an urbanized area, there shall be a written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of consistent metropolitan transportation plans and TIPs across the MPA boundaries, particularly in cases in which a proposed transportation investment extends across the boundaries of more than one MPA.” See 72 FR 7224, February 14, 2007. The FHWA and FTA adopted that language as § 450.314(d), and redesignated it in a 2016 rulemaking as § 450.314(e).<sup>2</sup> The 2007 rule also added § 450.312(h), which explicitly recognizes that, over time, an urbanized area may extend across multiple MPAs. The 2007 rulemaking did not address how to reconcile these regulatory changes with the statutory minimum requirement that an MPA include the urbanized area in its entirety.

As a result, since 2007, the language of the regulation has supported the possibility of multiple MPOs within an urbanized area rather than within an MPA. The FHWA and FTA have concluded this 2007 change in the regulatory definition has fostered confusion about the statutory requirements and resulted in less efficient planning outcomes where multiple TIPs and metropolitan transportation plans are developed within a single urbanized area. This proposed rule is designed to correct the problems

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<sup>2</sup> Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning; Final Rule, 81 FR 34050, May 27, 2016.

that have occurred under the 2007 rule and return to the structure embodied in the rule before the 2007 amendments and envisioned in statute. The additional coordination requirements pertain to all MPOs designated within the MPA boundaries.

Illustrations of metropolitan areas are included in the docket to aid understanding of the distinction between MPO and MPA boundaries, and also the difference between the way MPAs have been designated in practice and the minimum area that must be included as a result of this proposed rulemaking. These illustrations will help clarify the coordination requirements proposed in this rulemaking.

#### **MPO Coordination within an MPA**

The metropolitan planning statute calls for “each MPO to prepare and update a transportation plan for its metropolitan planning area” and “develop a TIP for the metropolitan planning area.” 23 U.S.C. 134(i)(1)(A) and (j)(1)(A). As discussed above, the metropolitan planning statute includes an exception provision in 23 U.S.C. 134(d)(7) that allows more than one MPO in an MPA under certain conditions. In some instances, multiple MPOs have been designated not only within a single MPA, but also within a single urbanized area in an MPA. Presently, such MPOs typically create separate metropolitan transportation plans and TIPs for separate parts of the urbanized area. Currently, the regulations require that where multiple MPOs exist within the same urbanized area, their written agreements must describe how they will coordinate activities. However, the extent and effectiveness of coordination varies, and in some cases effective coordination on regional needs and interests can prove challenging. Ultimately, the Secretary of Transportation believes, and FHWA and FTA concur, that

the end result of two or more separate metropolitan transportation planning processes, resulting in two or more separate plans and TIPs for a single urbanized area is most often both inefficient and confusing to the public. For example, members of the public may be affected by projects in multiple MPO jurisdictions, either because they live in the area of one MPO and work or regularly travel to another, or because the MPOs' jurisdictional lines bisect their community. They would therefore find it necessary to contribute to each MPO's separate planning process in order to have their regional concerns adequately considered. Public participation in transportation planning is critical to ensuring that the investment decisions meet the needs of the affected communities.

Further, a regional perspective is needed if metropolitan transportation planning is to maximize economic opportunities, while also addressing the externalities of growth such as congestion, air and water quality impacts, and impacts on resilience. The Secretary of Transportation believes, and FHWA and FTA concur, that joint decisionmaking is necessary in the multiple MPO situations to best ensure application of a regional perspective. Accordingly, this rulemaking addresses coordination and decisionmaking requirements for MPOs that are subject to the 23 U.S.C. 134(d)(7) exception to the one-MPO-per-MPA structure of the metropolitan planning statute.

### **Coordination between States and MPOs**

The statewide planning statute calls for a continuing, cooperative, and comprehensive process for developing the statewide plan and the statewide transportation improvement program (STIP). 23 U.S.C. 135(a)(3). The statute requires States to develop the long range statewide plan and the STIP in cooperation with MPOs designated

under 23 U.S.C. 134. 23 U.S.C. 135(f)(2)(A) and (g)(2)(A). While these statutes require that the State work in cooperation with the MPOs on long-range statewide transportation plans and STIPs, the extent to which MPO voices are heard varies significantly. The nature of decisionmaking authority of MPOs and States varies due to numerous factors, including the extent of local funding for transportation projects. The Secretary of Transportation believes that the voices of MPOs will be strengthened by having a single coordinated metropolitan transportation plan and TIP for each MPA, which should create a united position on transportation needs and priorities within that urbanized area. Ultimately, each relationship between State and MPO is unique, and there may not be a single coordination process that is appropriate for all areas of the country. However, it is the opinion of the Secretary of Transportation that there must be adequate cooperation between States and MPOs. The FHWA and FTA concur in those views, and therefore this proposed rule would require that States and MPOs demonstrate evidence of cooperation, including the existence of an agreed upon dispute resolution process.

The purpose of the Planning program is to use public funds effectively and FHWA and FTA welcome ideas to improve our planning processes. As such, FHWA and FTA seek comment on how DOT can incorporate processes to further ensure that Federal funds are used efficiently by States and MPOs. How can the Statewide and Non metropolitan and Metropolitan Transportation Planning process provide stronger incentives to States and MPOs to manage transportation funding more effectively?

### **III. Section- by- Section Discussion**

#### **Section 450.104 – Definitions**

The proposed rule would revise the definition of “metropolitan planning area” in § 450.104 to add language to align the definition with the basic statutory requirements for MPA boundaries. The purpose of the revision is to help reduce confusion about MPA requirements. The current definition describes the MPA as the geographic area determined by agreement between the MPO(s) for the area and the Governor. That definition does not include any reference to the minimum requirement in 23 U.S.C. 134(e)(2)(A) that the MPA must include the entire urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan. The revised definition would add a description of the minimum requirement from the statute, and describe the 23 U.S.C. 134(e)(2)(B) option to include more than the minimum geographic area. The FHWA and FTA specifically ask for comments on whether the rule ought to expressly address how States and MPOs should determine MPA boundaries where two or more MPAs are contiguous or can be expected to be contiguous in the near future. For example, should the rule provide that such MPAs must merge? Alternatively, should the rule allow the States and MPOs to tailor the MPA boundaries and the 20-year urbanization forecast to take the proximity of other MPAs into account?

The term “Metropolitan Transportation Plan” is revised by changing the location and number of MPO references in the definition, and by adding a reference to the MPA. Similar changes are proposed for the definition of “Transportation Improvement Program” to make it clear the definition encompasses situations where multiple MPOs in an MPA work together to develop a unified TIP. The inclusion of new references to the

MPA in the definitions clarifies that the Metropolitan Transportation Plan and the TIP are developed through the metropolitan transportation planning process for the entire MPA.

**Section 450.208 - Coordination of planning process activities**

The proposed rule would strengthen and clarify expectations for State-MPO coordination, and would require metropolitan planning agreements to include coordination strategies and dispute resolution procedures. Section 450.208(a)(1) previously encouraged States to rely on MPO data and analysis for areas within the MPA; the rule would now require coordination between States and MPOs. This change is proposed to ensure States and MPOs employ consistent data, assumptions and other analytical materials when doing transportation planning; this does not affect roles and responsibilities for project prioritization. The section would be further amended by adding language to require the State and MPO to maintain a current planning agreement that includes a process for resolving disagreements. The metropolitan planning agreement, and its inclusion of strategies for coordination and the resolution of disagreements would be included among the other relevant documents considered by FHWA and FTA as part of their periodic determination under 23 U.S.C. 135(g)(8) whether the transportation planning process through which statewide transportation plans and programs are developed is consistent with 23 U.S.C. 134-135.

**Section 450.218 - Development and content of the statewide transportation improvement program (STIP).**



The proposed rule would change the reference to “MPO” to “MPO(s)” in two places. This is to more clearly recognize the possibility that multiple MPOs may be involved with the development of a single metropolitan TIP.

#### **Section 450.226 – Phase-in of new requirements**

The proposed rule would provide a phase-in provision for the proposed requirement in 23 CFR 450.208(a)(1) that metropolitan planning agreement must include strategies for coordination and the resolution of disagreements. In proposed § 450.226(h), the rule would provide a phase-in period of 2 years after the publication date of a final rule. The compliance date for all other proposed changes in 23 CFR part 450, subpart A would be the effective date of the final rule. The FHWA and FTA seek comments on the appropriateness of the proposed 2-year phase-in period.

#### **Section 450.300 – Purpose**

The proposed rule would add a reference to MPA in the first sentence in § 450.300(a). The addition makes it clear that an MPO carries out the planning process for its MPA. This change will enhance the consistency in the rule, maintaining the statutory focus on the MPO as carrying out planning for its MPA, of which one or more entire urbanized areas are a part.

#### **Section 450.306 – Scope of the metropolitan transportation planning process**

The proposed rule would add a new paragraph to § 450.306(d). Where there are multiple MPOs for an MPA, the new provision would require the MPOs to jointly establish the MPA’s performance targets under 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d). This requirement for a joint target-setting process

would be consistent with the requirements established in the proposed rule for a joint metropolitan plan and TIP for the MPA shared by the MPOs. The FHWA and FTA request comments on the proposed language, and request ideas for alternatives that might better accomplish the goals embodied in the proposal. Those goals are to ensure performance targets appropriately reflect the needs and priorities of the MPA as a whole, and to avoid a situation where the MPOs within a single MPA select inconsistent or conflicting performance targets.

In paragraph (i), the proposed rule would change the reference from “MPO” to “MPO(s)” in the last sentence of the paragraph. This is to more clearly recognize the possibility that multiple MPOs may be involved with the development of an abbreviated plan or TIP using simplified procedures.

#### **Section 450.310 – Metropolitan planning organization designation and redesignation**

As provided in statute, some MPAs will necessarily be so large and complex that multiple MPOs are needed within the MPA. The proposed rule reflects the view, based on an interpretation of the planning statutes and on FHWA and FTA experiences, that when there are multiple MPOs within the same MPA, enhanced coordination and joint decisionmaking procedures are needed to ensure a coordinated and comprehensive planning process within the MPA. The proposed rule would revise § 450.310(e) by clarifying that more than one MPO can be designated for an MPA only when the Governor and MPO(s) determine it is warranted, in accordance with § 450.310(e). This change would reinforce the statutory principle that ordinarily only one MPO shall be designated for an MPA. The proposed rule retains the statutory standard permitting the

designation of multiple MPOs within an MPA only if the Governor and existing MPO determine that the MPA's size and complexity necessitate multiple MPOs. Several references in the existing rule to "urbanized areas" would be replaced with "MPA" to better align with the statutory language.

The proposed rule would articulate in § 450.310(e) the limited exemption to the requirement of one MPO per MPA and the requirements applicable when multiple MPOs are designated within the same MPA. The case could arise that multiple MPOs that were previously designated will come to be located within the same MPA, either because this rule, once effective, will require some Governors and MPOs to reevaluate the bounds of MPAs, or due to the future merger of urbanized areas following a Decennial Census. In those situations, paragraph (e) provides that the Governor and MPOs would have to determine whether the size and complexity of the MPA warrant the designation of multiple MPOs.

The statute envisions a single MPO per MPA, with the exception that more than one MPO may be designated only if the Governor and existing MPO determine that the size and complexity of the metropolitan planning area make the designation of multiple MPOs appropriate. However, because of the past practice of many MPOs and Governors treating the term MPA as essentially synonymous with the territory of any particular MPO, many MPOs are not in compliance with the statute. This rule would require some MPOs and Governors to conceptualize for the first time the bounds of the MPAs as geographically distinct from the jurisdictional boundaries of the MPOs. Accordingly, for any MPOs that newly share an MPA with one or more other MPOs as a result of this

rulemaking enforcing the statutory definition of MPA, the affected MPOs and Governor must make a determination that the MPA is of a size and complexity that makes multiple MPOs appropriate, or must merge the MPOs in MPAs where the Governor and MPOs determine that the size and complexity do not make multiple MPOs appropriate.

If the Governor and MPOs determine that multiple MPOs are not warranted based on the size and complexity of the MPA, those MPOs would have to merge and follow the redesignation procedures in § 450.310(h). Where it is determined that multiple MPOs are warranted, coordination still would be required among the MPOs in the affected MPA under the rule, with revisions to emphasize that the MPOs would jointly develop a unified plan, TIP, and performance targets for the entire MPA. The MPOs still would be required to establish official, written agreements that clearly identify areas of coordination, the division of transportation planning responsibilities among and between the MPOs, and procedures for joint decisionmaking and the resolution of disagreements—all for and within the affected MPA. Together with the Governor, those MPOs would jointly establish the MPO boundaries within the MPA.

The proposed rule would change a reference to “entire MPA” in paragraph (m), concerning coordination in multistate metropolitan areas, to “entire metropolitan area.” The FHWA and FTA believe “metropolitan area” is consistent with “multistate metropolitan area” and more clearly conveys the intent of the paragraph.

#### **Section 450.312 – Metropolitan planning area boundaries**

The proposed rule would reorganize, and make technical edits to, existing § 450.312. The proposed rule would add or clarify requirements through revisions in paragraphs (c), (f), (h), and (i).

The proposed rule would reorganize § 450.312(a) by switching the order of the first two sentences. The proposed rule would move certain references to “MPA” and add language in proposed § 450.312(a)(1) to clarify and emphasize that an agreement between the Governor and an MPO concerning the boundaries of an MPA is subject to the minimum requirement that the MPA contain the entire existing urbanized area plus the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan. The proposed rule also adds a new § 450.312(a)(2) to clarify that when MPOs are contiguous to the same non-urbanized area that is expected to become urbanized within a 20-year forecast period for the transportation plan, they must agree on their mutual MPA boundaries so that their boundaries do not overlap.

Section 450.312(b) would be reorganized. Section 450.312(b) and (c) would be edited for consistency with the requirement that an MPA contain an urbanized area in its entirety.

Section 450.312(f) would be revised to more closely align with the language of 23 U.S.C. 134(f). That provision calls for the Secretary to encourage the Governors and MPOs in a multistate metropolitan area to coordinate transportation planning across the entire metropolitan area. The FHWA and FTA concluded the statute’s use of the term “metropolitan area,” rather than the statutorily-defined term “MPA,” reflects an intention to promote coordinated planning across a broader area than a single MPA. This

interpretation takes into consideration the plain language meaning of “metropolitan area.” as well as the historical use of the term by the Federal Government.<sup>3</sup> The type of coordination called for in 23 U.S.C. 134(f), as reflected in the proposed revisions to § 450.312(f), reaches beyond MPAs to include not only the core urban areas but also outlying areas that are economically and socially integrated with the urban areas. The proposed rule also would add language describing the compact authority contained in 23 U.S.C. 134(f).

Section 450.312(h) would be entirely rewritten for consistency with the proposed rule’s emphasis on the statutory requirement that all of an urbanized area be contained in the same MPA. As proposed, § 450.312(h) would describe the organizational options available to Governors and MPOs where more than one MPO is designated in an MPA, as authorized by the exception in 23 U.S.C. 134(d)(7). Proposed § 450.312(h)(1) through (3) would describe minimum requirements applicable where the multiple MPOs exist in a single MPA. The three requirements would be (1) a written agreement among the MPOs to identify how planning decisions will be made and carried out, (2) use of joint decisionmaking to develop a single metropolitan transportation plan and TIP for the entire MPA, and (3) establishment of the boundaries for each MPO within the MPA by agreement of the Governor and the affected MPOs.

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<sup>3</sup> See, e.g., the U.S. Census Bureau discussions in “Metropolitan Areas” available online at [https://www.census.gov/history/www/programs/geography/metropolitan\\_areas.html](https://www.census.gov/history/www/programs/geography/metropolitan_areas.html) (as of March 2016) and “Metropolitan Areas Standards Review Project (MASRP)” available online at <http://www.census.gov/population/metro/data/masrp.html> (as of March 2016); see also Office of management and Budget discussion in its Notice of Standards for Defining Metropolitan and Micropolitan Statistical Areas (65 FR 82228, at 82228-82229 (December 27, 2000)).

The proposed rule would revise § 450.312(i), which addresses reviews of MPA boundaries after each Census. The changes would include clarifying that the minimum requirements for MPAs apply in this situation. Following a Decennial Census, the MPO(s) are required to review the MPA boundaries to ensure compliance with the minimum statutory requirements. This includes changes in urbanized areas that result in the merging of previously separate urbanized areas, or expansion of urbanized areas into a neighboring MPA. Under the proposed rule, if a Census results in two previously separate urbanized areas being defined as a single urbanized area, the Governor and MPO(s) would have to redetermine the affected MPAs as a single MPA that includes the entire new urbanized area plus the contiguous area expected to become urbanized within a 20-year forecast period of the transportation plan. The MPOs may remain separate only if the Governor and MPOs determine that the size and complexity of the MPA make it appropriate to have multiple MPOs designated for the area, as described in 23 U.S.C. 134(d)(7). This paragraph also clarifies the responsibilities when two or more MPOs may be adjacent to the same non-urbanized area that is expected to become urbanized within a 20-year forecast period for the transportation plan, or when an urbanized area expands into a neighboring MPA. In these situations, the Governor and MPOs are encouraged to merge adjacent MPAs when urbanized areas are contiguous or when the urbanized areas are expected to become contiguous within a 20-year forecast period for the transportation plan, but they must at a minimum agree on their mutual MPA boundaries. This paragraph also establishes a timeline for compliance following a Decennial Census that results in the merger of two or more previously separate MPAs.

The proposed rule would add a new paragraph – § 450.312(j) – which would enumerate the situations in which a Governor and MPOs are encouraged to merge multiple MPAs into a single MPA, including when multiple urbanized areas are directly adjacent to each other, when they are expected to grow to become adjacent within 20 years, or when they are adjacent to the same non-urbanized area that is expected to become urbanized within 20 years.

The proposed rule would change a reference in the renumbered § 450.312(k) from “MPO” to “MPO(s)” for consistency with other proposed changes.

#### **Section 450.314 – Metropolitan planning agreements**

The proposed rule would change several references in § 450.314 from “MPO” to “MPO(s)” for consistency with other proposed changes in the rule.

The proposed rule would make several changes to § 450.314(e). The rule would change “an urbanized area” in the first sentence to “an MPA,” to better reflect the statutory relationship between MPOs, MPAs, and urbanized areas. The sentence would also be changed to require development of a single metropolitan transportation plan and TIP for an MPA. Where a proposed transportation investment extends across the boundaries of more than one MPA, the proposed rule would require MPOs to coordinate to assure the development of consistent metropolitan transportation plans and TIPs. This would replace language in the existing rule that calls for consistent plans and TIPs across the MPA. The proposed rule would require, rather than encourage, the use of coordinated data collection, analysis, and planning assumptions across the MPA. The proposed rule would strongly encourage the use of such practices across neighboring



MPOs that are not within the same MPA. The FHWA and FTA seek comments on what, if any, exemptions ought to be contained in the rule from these requirements, and what criteria might be used for such an exemption.

The proposed rule would eliminate the phrase “urbanized area” from § 450.314(f), concerning multistate MPAs, and change existing references from “multistate area” to “multistate MPA.” These changes will make the provision more consistent with the planning statute and other proposed changes in the rule.

Under the proposed rule, § 450.314(g) would be revised for consistency with the statutory requirement that all of an urbanized area be included within the same MPA. The proposed rule would clarify that the rule’s existing requirement for a written agreement on roles and responsibilities for meeting transportation management area (TMA) requirements applies where more than one MPO serve the MPA containing the TMA.

Similar changes would be made in § 450.314(h), to clarify that the cooperative development and sharing of information related to performance management applies when an MPA includes an urbanized area that has been designated as a TMA as well as an urbanized area that is not a TMA.

#### **Section 450.316 - Interested parties, participation, and consultation**

The proposed rule would revise § 450.316(b), (c), and (d) by changing references from “MPO” to “MPO(s).” These changes would make the references consistent with other changes proposed in this rule.

#### **Section 450.324 – Development and content of the metropolitan transportation plan**

References to “MPO” in several parts of § 450.324 would be changed to “MPO(s)” for consistency with other proposed changes to the rule. The proposed rule would redesignate the current § 450.324(c) through (m) as § 450.324(d) through (n), respectively, and add a new paragraph (c). The new provision would require that, if more than one MPO has been designated to serve an MPA, those MPOs within the MPA shall (1) jointly develop a single metropolitan transportation plan for the MPA; (2) jointly establish, for the MPA, the performance targets that address the performance measures described in 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d); and (3) agree to a process for making a single conformity determination on the joint plan (in nonattainment or maintenance areas). The FHWA and FTA seek comments on what, if any, exemptions ought to be contained in the rule from these requirements, and what criteria might be used for such an exemption. The FHWA and FTA also request comments on the question whether additional changes are needed in FHWA and FTA regulations on performance measures and target setting (e.g., 23 CFR part 490) to cross-reference this new planning provision on target-setting.

**Section 450.326 – Development and content of the transportation improvement program**

The proposed rule would add a sentence to § 450.326(a) to require that in MPAs with multiple MPOs the MPOs must jointly develop a single TIP for the MPA. The rule would require such MPOs, if in nonattainment or maintenance areas, to agree on a process for making a single conformity determination on the joint TIP. The FHWA and

FTA seek comments on what, if any, exemptions ought to be contained in the rule from these requirements, and what criteria might be used for such an exemption.

The proposed rule would change “MPO” to “MPO(s)” in paragraphs (a), (b), (j), and (p). Those changes would be made for better consistency with other changes proposed in the rulemaking.

#### **Section 450.328 - TIP revisions and relationship to the STIP**

The proposed rule would change “MPO” to “MPO(s)” in § 450.328(a), (b), and (c). The changes would be made for better consistency with other changes proposed in the rule.

#### **Section 450.330 - TIP action by the FHWA and the FTA**

The proposed rule would change “MPO” to “MPO(s)” in § 450.330(a) and (c). Section 450.330(c) would be clarified by changing the first part of the first sentence from “[i]f an MPO has not...”, to “[i]f an MPO or MPOs have not...” All these changes are for better consistency with proposed revisions in other parts of the rule concerning how planning requirements apply where there are multiple MPOs in an MPA provisions, as authorized by the exception provision in 23 U.S.C. 134(d)(7).

#### **Section 450.332 - Project selection from the TIP**

The proposed rule would change “MPO” to “MPO(s)” in § 450.332(b) and (c), for better consistency with other changes proposed in the rule.

#### **Section 450.334 - Annual listing of obligated projects**

The proposed rule would change “MPO” to “MPO(s)” in § 450.334(a), for better consistency with other changes proposed in the rulemaking.

### **Section 450.336 - Self-certifications and Federal certifications**

The proposed rule would change “MPO” to “MPO(s)” in several places in § 450.336(b), for better consistency with other changes proposed in the rule.

### **Section 450.340 – Phase-in of new requirements**

The proposed rule would add phase-in implementing provisions to § 450.340 for certain parts of the proposed rule. The compliance date for all other proposed changes would be the effective date of the final rule.

In a new paragraph (h), FHWA and FTA propose giving States and MPOs 2 years before they would have to be fully compliant with the MPA boundary and MPO boundaries agreement provisions in §§ 450.310 and 450.312, and with the requirements for jointly established performance targets and a single metropolitan transportation plan and TIP for the entire MPA. The proposed rule would require the Governor and MPOs to document their determination of whether the size and complexity of the MPA justify the designation of multiple MPOs, however, the decision would not be subject to approval by FHWA and FTA. Full compliance for all MPOs within the MPA would be required before the earliest next regularly scheduled update of a metropolitan transportation plan for any MPO within the MPA, following the second anniversary of the effective date of a final rule, if adopted. The FHWA and FTA seek comment on the appropriateness of the proposed 2-year phase-in period.

## **IV. Regulatory Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and available for examination in the docket at the

above address. Comments received after the comment closing date will be filed in the docket and considered to the extent practicable. In addition to late comments, FHWA and FTA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after FHWA and FTA have had the opportunity to review the comments submitted.

**A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures.**

The FHWA and FTA have determined that this proposed rule is a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT regulatory policies and procedures. This proposed regulation seeks to improve the clarity of the planning rules by addressing ambiguity in MPO boundaries and responsibilities and better aligning the regulations with the statute. Additionally, the MPOs shall establish procedures for joint decisionmaking as well as a process for resolving disagreements. These changes are also intended to result in better outcomes for the MPOs, State agencies, providers of public transportation and the public, by restoring a regional focus for metropolitan planning, and by unifying MPO processes within an urbanized area in order to improve the ability of the public to understand and participate in the transportation planning process. The joint planning requirements of this rule affect primarily urbanized areas with multiple MPOs planning for the same area, or 142 of the

409 MPOs in the country. The affected MPOs are: 1) MPOs that have been designated for an urbanized area for which other MPOs also have been designated and/or 2) MPOs where an adjacent urbanized area has spread into its MPA boundary. The MPOs designated as an MPO in multiple MPAs, in which one or more other MPOs are also designated, would be required to participate in the planning processes for each MPA. Thus, under this rule, MPOs that have jurisdiction in more than one MPA would be required to participate in multiple separate planning processes. However, the affected MPOs could exercise several options to reduce or eliminate these impacts, including adjustment of MPA boundaries to eliminate overlap and by merging MPOs. The FHWA and FTA are seeking comments on what other options affected MPOs could exercise to reduce the overlap while meeting the statutory and regulatory requirements. The FHWA and FTA expect that such responses will reduce the number of MPOs ultimately affected by these coordination requirements.

All MPOs will be required to review their agreements with State DOTs and providers of public transportation to ensure that there are written procedures for joint decisionmaking and dispute resolution. The FHWA and FTA expect that the MPOs, State DOTs and providers of public transportation will undertake this review and update as they identify how they will implement a performance based planning and programming process required by MAP-21 and revised Statewide and Nonmetropolitan Transportation and Metropolitan Transportation Final Rule (FHWA RIN: 2125-AF52; FTA RIN:2132-AB10). Because FHWA and FTA anticipate that the reviews would

occur due to other existing requirements and in the absence of the proposed rule, the incremental impact, to the extent that there is any, should be quite small.

In some cases, a Governor (or Governors in the case of multistate urbanized areas) and MPOs could determine that the size and complexity of the area make multiple MPOs appropriate. The proposed rule would require those multiple separate MPOs to jointly develop unified planning products: a single metropolitan transportation plan, a single TIP, and a jointly established set of performance targets for the MPA. This should not create a large burden, and will in some cases reduce overall planning costs. Because MPOs within the same urban area will produce single planning documents, there will be less overlapping and duplicative work. Thus, the rule will enhance efficiency in planning processes for some areas, and generate cost-savings due to creating single rather than multiple documents as well as through pooling of resources and sharing data, models, and other tools. However, the MPOs that are not accustomed to coordinating across boundaries will have to establish relationships and protocols, and reconcile procedures. Coordination could create some initial costs, but those will diminish over time. There is also expected to be some offsetting costs for State DOTs and MPOs due to the necessity of updating metropolitan planning agreements to include dispute resolution processes. These costs are expected to be primarily experienced in the initial year, as processes are developed.

To the extent that there are any costs, 80 percent are directly reimbursable through Federal transportation funds allocated for metropolitan planning (23 U.S.C. 104(f) and 49

U.S.C. 5303(h)) and for State planning and research (23 U.S.C. 505 and 49 U.S.C. 5313).

Thus, the costs to the affected MPOs should be minimal.

The FHWA and FTA also expect there will be some cost savings for State DOTs, which will benefit from having fewer TIPs to incorporate into their STIPs. There will also be benefits to the public if the coordination requirements result in a planning process in which public participation opportunities are transparent and unified for the entire region, and if members of the public have an easier ability to engage in the planning process.

The FHWA and FTA seek comments and available data on the costs and benefits of the proposals of this rulemaking.

In addition, this action complies with the principles of Executive Order 13563. After evaluating the costs and benefits of these proposed amendments, the FHWA and FTA anticipate that the net economic impact of this rulemaking would be minimal. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. In addition, these changes will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

## **B. Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), FHWA and FTA have evaluated the effects of this action on small entities and have determined that the action would not have a significant economic impact on a substantial number of small entities. The proposed amendment addresses the obligation of Federal



funds to State DOTs for Federal-aid highway projects. The proposed rule affects two types of entities: State governments and MPOs. State governments do not meet the definition of a small entity under 5 U.S.C. 601, which have a population of less than 50,000.

The MPOs are considered governmental jurisdictions, and to qualify as a small entity they would need to serve less than 50,000 people. The MPOs serve urbanized areas with populations of 50,000 or more. Therefore, the MPOs that might incur economic impacts under this proposed rule do not meet the definition of a small entity.

I hereby certify that this regulatory action would not have a significant impact on a substantial number of small entities.

### **C. Unfunded Mandates Reform Act of 1995**

The FHWA and FTA have determined that this NPRM does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). This proposed rule does not include a Federal mandate that may result in expenditures of \$155.1 million or more in any one year (when adjusted for inflation) in 2012 dollars for either State, local, and tribal governments in the aggregate, or by the private sector. The FHWA and FTA will publish a final analysis, including its response to public comments, when it publishes a final rule. Additionally, the definition of “Federal mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the

program by the Federal Government. The Federal-aid highway program and Federal Transit Act permits this type of flexibility.

**D. Executive Order 13132 (Federalism Assessment)**

The FHWA and FTA have analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132. The FHWA and FTA have determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA and FTA have also determined that this action does not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

**E. Executive Order 12372 (Intergovernmental Review)**

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, for further information.

**F. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et seq.), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The DOT has analyzed this proposed rule under the PRA and has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

**G. National Environmental Policy Act**

Federal agencies are required to adopt implementing procedures for National Environmental Policy Act (NEPA) that establish specific criteria for, and identification of, three classes of actions: (1) those that normally require preparation of an Environmental Impact Statement, (2) those that normally require preparation of an Environmental Assessment, and (3) those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). This action qualifies for categorical exclusions under 23 CFR 771.117(c)(20) (promulgation of rules, regulations, and directives) and 771.117(c)(1) (activities that do not lead directly to construction) for FHWA, and 23 CFR 771.118(c)(4) (planning and administrative activities which do not involve or lead directly to construction) for FTA. The FHWA and FTA have evaluated whether the action would involve unusual or extraordinary circumstances and have determined that this action would not.

#### **H. Executive Order 12630 (Taking of Private Property)**

The FHWA and FTA have analyzed this proposed rule under Executive Order (EO) 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The FHWA and FTA do not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under E.O. 12630.

#### **I. Executive Order 12988 (Civil Justice Reform)**

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **J. Executive Order 13045 (Protection of Children)**

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA and FTA certify that this action would not cause an environmental risk to health or safety that might disproportionately affect children.

**K. Executive Order 13175 (Tribal Consultation)**

The FHWA and FTA have analyzed this action under E.O. 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses obligations of Federal funds to State DOTs for Federal-aid highway projects and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

**L. Executive Order 13211 (Energy Effects)**

The FHWA and FTA have analyzed this action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA and FTA have determined that this is not a significant energy action under that order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

**M. Executive Order 12898 (Environmental Justice)**

The E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) and DOT Order 5610.2(a) (77 FR 27534, May 10, 2012) (available online at

[http://www.fhwa.dot.gov/environment/environmental\\_justice/ej\\_at\\_dot/order\\_56102a/index.cfm](http://www.fhwa.dot.gov/environment/environmental_justice/ej_at_dot/order_56102a/index.cfm)) require DOT agencies to achieve Environmental Justice (EJ) as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority and low-income populations. The DOT agencies must address compliance with E.O. 12898 and the DOT Order in all rulemaking activities.

The FHWA and FTA have issued additional documents relating to administration of E.O. 12898 and the DOT Order. On June 14, 2012, FHWA issued an update to its EJ order, FHWA Order 6640.23A (FHWA Actions to Address Environmental Justice in Minority Populations and Low Income Populations (available online at <http://www.fhwa.dot.gov/legregs/directives/orders/664023a.htm>)). On August 15, 2012, FTA's Circular 4703.1 became effective, which contains guidance for States and MPOs to incorporate EJ into their planning processes (available online at [http://www.fta.dot.gov/documents/FTA\\_EJ\\_Circular\\_7.14-12\\_FINAL.pdf](http://www.fta.dot.gov/documents/FTA_EJ_Circular_7.14-12_FINAL.pdf)).

The FHWA and FTA have evaluated the final rule under the Executive order, the DOT Order, the FHWA Order, and the FTA Circular. The EJ principles, in the context of planning, should be considered when the planning process is being implemented at the State and local level. As part of their stewardship and oversight of the federally aided transportation planning process of the States, MPOs and operators of public transportation, FHWA and FTA encourage these entities to incorporate EJ principles into the statewide and metropolitan planning processes and documents, as appropriate and

consistent with the applicable orders and the FTA Circular. When FHWA and FTA make a future funding or other approval decision on a project basis, they consider EJ.

Nothing inherent in the proposed rule would disproportionately impact minority or low-income populations. The proposed rule establishes procedures and other requirements to guide future State and local decisionmaking on programs and projects. Neither the proposed rule nor 23 U.S.C. 134 and 135 dictate the outcome of those decisions. The FHWA and FTA have determined that the proposed rule would not cause disproportionately high and adverse human health and environmental effects on minority or low-income populations.

#### **N. Regulation Identifier Number**

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### **List of Subjects**

##### *23 CFR Part 450*

Grant programs—transportation, Highway and roads, Mass transportation, Reporting and record keeping requirements.

##### *49 CFR Part 613*

Grant programs—transportation, Highways and roads, Mass transportation.

Issued in Washington D.C. on June 17, 2016, under authority delegated in 49

CFR 1.85:

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Gregory G. Nadeau  
Administrator  
Federal Highway Administration

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Carolyn Flowers  
Acting Administrator  
Federal Transit Administration

In consideration of the foregoing, FHWA and FTA propose to amend title 23, Code of Federal Regulations, part 450, and title 49, Code of Federal Regulations, part 613, as set forth below:

**Title 23—Highways**

**PART 450--PLANNING ASSISTANCE AND STANDARDS**

1. The authority citation for part 450 continues to read as follows:

Authority: 23 U.S.C. 134 and 135; 42 U.S.C. 7410 et seq.; 49

U.S.C. 5303 and 5304; 49 CFR 1.85 and 1.90.

2. Amend § 450.104 by revising the definitions for “Metropolitan planning agreement”, “Metropolitan planning area (MPA)”, “Metropolitan transportation plan”, and “Transportation improvement program (TIP)” to read as follows:

**§ 450.104 Definitions.**

\* \* \* \* \*

*Metropolitan planning agreement* means a written agreement between the MPO(s), the State(s), and the providers of public transportation serving the metropolitan planning area that describes how they will work cooperatively to meet their mutual responsibilities in carrying out the metropolitan transportation planning process.

*Metropolitan planning area (MPA)* means the geographic area determined by agreement between the MPO(s) for the area and the Governor, which must at a minimum include the entire urbanized area and the contiguous area expected to become urbanized within a 20-year forecast period for the transportation plan, and may include additional areas.

\* \* \* \* \*

*Metropolitan transportation plan* means the official multimodal transportation plan addressing no less than a 20-year planning horizon, that is developed, adopted, and updated by the MPO or MPOs through the metropolitan transportation planning process for the MPA.

\* \* \* \* \*



*Transportation improvement program (TIP)* means a prioritized listing/program of transportation projects covering a period of 4 years that is developed and formally adopted by an MPO or MPOs as part of the metropolitan transportation planning process for the MPA, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. chapter 53.

\* \* \* \* \*

3. Amend § 450.208 by revising paragraph (a)(1) to read as follows:

**§ 450.208 Coordination of planning process activities.**

(a) \* \* \*

(1) Coordinate planning carried out under this subpart with the metropolitan transportation planning activities carried out under subpart C of this part for metropolitan areas of the State. When carrying out transportation planning activities under this part, the State and MPOs shall coordinate on information, studies, or analyses for portions of the transportation system located in metropolitan planning areas. The State(s), the MPO(s) and the operators of public transportation must have a current metropolitan planning agreement, which will identify coordination strategies that support cooperative decisionmaking and the resolution of disagreements;

\* \* \* \* \*

**§ 450.218 [Amended]**

4. Amend § 450.218(b) by removing “MPO” and adding in its place “MPO(s)” in both places it appears.
5. Amend § 450.226 by adding paragraph (g) to read as follows:

**§ 450.226 Phase-in of new requirements.**

\* \* \* \* \*

(g) On and after [date 2 years after publication of the final rule], the State(s), the MPO(s) and the operators of public transportation must have a current metropolitan planning agreement, which will identify coordination strategies that support cooperative decision-making and the resolution of disagreements.

**Subpart C--Metropolitan Transportation Planning and Programming**

6. Amend § 450.300 by:

a. Revising paragraph (a); and

b. Removing from paragraph (b) the word “Encourages” and adding in its place “Encourage”.

The revision reads as follows:

**§ 450.300 Purpose.**

\* \* \* \* \*

(a) Set forth the national policy that the MPO designated for each urbanized area is to carry out a continuing, cooperative, and comprehensive performance-based multimodal transportation planning process for its MPA, including the development of a metropolitan transportation plan and a TIP, that encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight (including accessible pedestrian walkways and bicycle transportation facilities) and foster economic growth and development, while minimizing transportation-related fuel consumption and air pollution; and

\* \* \* \* \*

7. Amend § 450.306 by adding paragraph (d)(5) and revising paragraph (i) as follows:

**§ 450.306 Scope of the metropolitan transportation planning process.**

\* \* \* \* \*

(d) \* \* \*

(5) In MPAs in which multiple MPOs have been designated, the MPOs shall jointly establish, for the MPA, the performance targets that address performance measures or standards established under 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d).

\* \* \* \* \*

(i) In an urbanized area not designated as a TMA that is an air quality attainment area, the MPO(s) may propose and submit to the FHWA and the FTA for approval a procedure for developing an abbreviated metropolitan transportation plan and TIP. In developing proposed simplified planning procedures, consideration shall be given to whether the abbreviated metropolitan transportation plan and TIP will achieve the purposes of 23 U.S.C. 134, 49 U.S.C. 5303, and these regulations, taking into account the complexity of the transportation problems in the area. The MPO(s) shall develop simplified procedures in cooperation with the State(s) and public transportation operator(s).

8. Amend § 450.310 by revising paragraphs (e) and (m) introductory text to read as follows:

**§ 450.310 Metropolitan planning organization designation and redesignation.**

\* \* \* \* \*

(e) Except as provided in this paragraph, only one MPO shall be designated for each MPA. More than one MPO may be designated to serve an MPA only if the Governor(s) and the existing MPO(s), if applicable, determine that the size and complexity of the MPA make designation of more than one MPO in the MPA appropriate. In those cases where the Governor(s) and existing MPO(s) determine that the size and complexity of the MPA do make it appropriate that two or more MPOs serve within the same MPA, the Governor and affected MPOs by agreement shall jointly establish or adjust the boundaries for each MPO within the MPA, and the MPOs shall establish official, written agreements that clearly identify areas of coordination, the division of transportation planning responsibilities within the MPA among and between the MPOs, and procedures for joint decisionmaking and the resolution of disagreements. If multiple MPOs were designated in a single MPA prior to this rule or in multiple MPAs that merged into a single MPA following a Decennial Census by the Bureau of the Census, and the Governor(s) and the existing MPOs determine that the size and complexity do not make the designation of more than one MPO in the MPA appropriate, then those MPOs must merge together in accordance with the redesignation procedures in this section.

\* \* \* \* \*

(m) Each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs shall, to the extent practicable, provide coordinated

transportation planning for the entire metropolitan area. The consent of Congress is granted to any two or more States to:

\* \* \* \* \*

9. Section 450.312 is revised to read as follows:

**§ 450.312 Metropolitan planning area boundaries.**

(a) At a minimum, the boundaries of an MPA shall encompass the entire existing urbanized area (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan.

(1) Subject to this minimum requirement, the boundaries of an MPA shall be determined through an agreement between the MPO and the Governor.

(2) If two or more MPAs would otherwise include the same non-urbanized area that is expected to become urbanized within a 20-year forecast period, the Governor and the relevant MPOs are required to agree on the final boundaries of the MPA or MPAs such that the boundaries of the MPAs do not overlap. In such situations, the Governor and MPOs are encouraged, but not required, to combine the MPAs into a single MPA. Merger into a single MPA would also require the MPOs to merge in accordance with the redesignation procedures described in § 450.310(h), unless the Governor and MPO(s) determine that the size and complexity of the MPA make multiple MPOs appropriate, as described in § 450.310(e).

(3) The MPA boundaries may be further expanded to encompass the entire metropolitan statistical area or combined statistical area, as defined by the Office of Management and Budget.

(b) The MPA boundaries that existed on August 10, 2005 shall be retained for an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) as of August 10, 2005. Such MPA boundaries may only be adjusted by agreement of the Governor and the affected MPO(s) in accordance with the redesignation procedures described in § 450.310(h). The boundaries for an MPA that includes an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 et seq.) after August 10, 2005, may be established to coincide with the designated boundaries of the ozone and/or carbon monoxide nonattainment area, in accordance with the requirements in § 450.310(b).

(c) An MPA boundary may encompass more than one urbanized area, but each urbanized area must be included in its entirety.

(d) MPA boundaries may be established to coincide with the geography of regional economic development and growth forecasting areas.

(e) Identification of new urbanized areas within an existing metropolitan planning area by the Bureau of the Census shall not require redesignation of the existing MPO.

(f) In multistate metropolitan areas, the Governors with responsibility for a portion of the multistate metropolitan area, the appropriate MPO(s), and the public

transportation operator(s) are strongly encouraged to coordinate transportation planning for the entire multistate metropolitan area. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(g) The MPA boundaries shall not overlap with each other.

(h) Where the Governor and MPO(s) have determined that the size and complexity of the MPA make it appropriate to have more than one MPO designated for an MPA, the MPOs within the same MPA shall, at a minimum:

(1) Establish written agreements that clearly identify coordination processes, the division of transportation planning responsibilities among and between the MPOs, and procedures for joint decisionmaking and the resolution of disagreements;

(2) Through a joint decisionmaking process, develop a single TIP and a single metropolitan transportation plan for the entire MPA;

(3) Establish the boundaries for each MPO within the MPA, by agreement among all affected MPOs and the Governor.

(i) The MPO(s) (in cooperation with the State and public transportation operator(s)) shall review the MPA boundaries after each Census to determine if existing

MPA boundaries meet the minimum statutory requirements for new and updated urbanized area(s), and shall adjust them as necessary in order to encompass the entire existing urbanized area(s) plus the contiguous area expected to become urbanized within the 20-year forecast period of the metropolitan transportation plan. If after a Census, two previously separate urbanized areas are defined as a single urbanized area, not later than 180 days after the release of the U.S. Bureau of the Census notice of the Qualifying Urban Areas for a decennial census, the Governor and MPO(s) shall redetermine the affected MPAs as a single MPA that includes the entire new urbanized area plus the contiguous area expected to become urbanized within the 20-year forecast period of the metropolitan transportation plan. As appropriate, additional adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, improves access to modal systems, and promotes efficient overall transportation investment strategies. If more than one MPO is designated for urbanized areas that are merged following a Decennial Census by the Bureau of the Census, the State and the MPOs shall comply with the MPA boundary and MPO boundaries agreement provisions in §§ 450.310 and 450.312, and shall determine whether the size and complexity of the MPA make it appropriate for there to be more than one MPO designated within the MPA. If the size and complexity of the MPA do not make it appropriate to have multiple MPOs, the MPOs shall merge, in accordance with the redesignation procedures in § 450.310(h). If the size and complexity do warrant the designation of multiple MPOs within the MPA, the MPOs shall comply with the requirements for jointly established performance targets, and a single metropolitan



transportation plan and TIP for the entire MPA, before the next metropolitan transportation plan update that occurs on or after two years after the release of the Qualifying Urban Areas for the Decennial Census by the Bureau of the Census, or within 4 years of the designation of the new UZA boundary, whichever occurs first.

(j) The Governor and MPOs are encouraged to consider merging multiple MPAs into a single MPA when:

(1) Two or more urbanized areas are adjacent to each other;

(2) Two or more urbanized areas are expected to expand and become adjacent within a 20 year forecast period; or

(3) Two or more neighboring MPAs would otherwise both include the same non-urbanized area that is expected to become urbanized within a 20-year forecast period.

(k) Following MPA boundary approval by the MPO(s) and the Governor, the MPA boundary descriptions shall be provided for informational purposes to the FHWA and the FTA. The MPA boundary descriptions shall be submitted either as a geo-spatial database or described in sufficient detail to enable the boundaries to be accurately delineated on a map.

10. Section 450.314 is revised to read as follows:

**§ 450.314 Metropolitan planning agreements.**

(a) The MPO, the State(s), and the providers of public transportation shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO(s), the State(s), and the providers of public

transportation serving the MPA. To the extent possible, a single agreement between all responsible parties should be developed. The written agreement(s) shall include specific provisions for the development of financial plans that support the metropolitan transportation plan (see § 450.324) and the metropolitan TIP (see § 450.326), and development of the annual listing of obligated projects (see § 450.334).

(b) The MPO(s), the State(s), and the providers of public transportation should periodically review and update the agreement, as appropriate, to reflect effective changes.

(c) If the MPA does not include the entire nonattainment or maintenance area, there shall be a written agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO(s) describing the process for cooperative planning and analysis of all projects outside the MPA within the nonattainment or maintenance area. The agreement must also indicate how the total transportation-related emissions for the nonattainment or maintenance area, including areas outside the MPA, will be treated for the purposes of determining conformity in accordance with the EPA's transportation conformity regulations (40 CFR part 93, subpart A). The agreement shall address policy mechanisms for resolving conflicts concerning transportation-related emissions that may arise between the MPA and the portion of the nonattainment or maintenance area outside the MPA.

(d) In nonattainment or maintenance areas, if the MPO is not the designated agency for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be a written agreement between the MPO and the designated air quality

planning agency describing their respective roles and responsibilities for air quality related transportation planning.

(e) If more than one MPO has been designated to serve an MPA, there shall be a written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of a single metropolitan transportation plan and TIP for the MPA. In cases in which a proposed transportation investment extends across the boundaries of more than one MPA, the MPOs shall coordinate to assure the development of consistent metropolitan transportation plans and TIPs. If any part of the urbanized area is a nonattainment or maintenance area, the agreement also shall include State and local air quality agencies. If more than one MPO has been designated to serve an MPA, the metropolitan transportation planning processes for affected MPOs must reflect coordinated data collection, analysis, and planning assumptions across the MPA. Coordination of data collection, analysis, and planning assumptions is also strongly encouraged for neighboring MPOs that are not within the same MPA. Coordination efforts and outcomes shall be documented in subsequent transmittals of the UPWP and other planning products, including the metropolitan transportation plan and TIP, to the State(s), the FHWA, and the FTA.

(f) Where the boundaries of the MPA extend across two or more States, the Governors with responsibility for a portion of the multistate MPA, the appropriate MPO(s), and the public transportation operator(s) shall coordinate transportation planning

for the entire multistate MPA, including jointly developing planning products for the MPA. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(g) If an MPA includes an urbanized area that has been designated as a TMA in addition to an urbanized area that is not designated as a TMA, the non-TMA urbanized area shall not be treated as a TMA. However, if more than one MPO serves the MPA, a written agreement shall be established between the MPOs within the MPA boundaries, which clearly identifies the roles and responsibilities of each MPO in meeting specific TMA requirements (e.g., congestion management process, Surface Transportation Program funds suballocated to the urbanized area over 200,000 population, and project selection).

(h) The MPO(s), State(s), and the providers of public transportation shall jointly agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (see § 450.306(d)), and the collection of data for the asset management plans

for the NHS for each of the following circumstances: when one MPO serves an urbanized area, when more than one MPO serves an urbanized area, and when an MPA includes an urbanized area that has been designated as a TMA as well as an urbanized area that is not a TMA. These provisions shall be documented either as part of the metropolitan planning agreements required under paragraphs (a), (e), and (g) of this section, or documented it in some other means outside of the metropolitan planning agreements as determined cooperatively by the MPO(s), State(s), and providers of public transportation.

**§ 450.316 [Amended]**

11. Amend § 450.316(b), (c), and (d) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs. 12. Amend § 450.324 as follows:

- a. In paragraph (a) replace “MPO” with “MPO(s)” wherever it occurs;
- b. Redesignate paragraphs (c) through (m) as paragraphs (d) through (n), respectively;
- c. Add new paragraph (c); and
- d. In newly redesignated paragraphs (d), (e), (f), (g)(10), (g)(11)(iv), (h), (k), (l), and (n), remove “MPO” with and add in its place “MPO(s)” wherever it occurs.

The revisions read as follows:

**§ 450.324 Development and content of the transportation improvement program (TIP).**

\* \* \* \* \*

(c) If more than one MPO has been designated to serve an MPA, those MPOs within the MPA shall:

- (1) Jointly develop a single metropolitan transportation plan for the MPA;
- (2) Jointly establish, for the MPA, the performance targets that address the performance measures described in 23 CFR part 490 (where applicable), 49 U.S.C. 5326(c) and 49 U.S.C. 5329(d); and
- (3) Agree to a process for making a single conformity determination on the joint plan (in nonattainment or maintenance areas).

\* \* \* \* \*

13. Amend § 450.326 as follows:

- a. Revise paragraph (a); and
- b. In paragraphs (b), (j), and (p) remove “MPO” and add in its place “MPO(s)” wherever it occurs.

The revision reads as follows:

**§ 450.326 Development and content of the transportation improvement program (TIP).**

(a) The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. If more than one MPO has been designated to serve an MPA, those MPOs within the MPA shall jointly develop a single TIP for the MPA and shall agree to a process for making a single conformity determination on the joint TIP (in nonattainment or maintenance areas). The TIP shall reflect the investment priorities established in the current metropolitan transportation plan and shall cover a period of no less than 4 years, be updated at least every 4 years, and be approved by the MPO(s) and the Governor.

However, if the TIP covers more than 4 years, the FHWA and the FTA will consider the projects in the additional years as informational. The MPO(s) may update the TIP more frequently, but the cycle for updating the TIP must be compatible with the STIP development and approval process. The TIP expires when the FHWA/FTA approval of the STIP expires. Copies of any updated or revised TIPs must be provided to the FHWA and the FTA. In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any updated or amended TIP, in accordance with the Clean Air Act requirements and the EPA's transportation conformity regulations (40 CFR part 93, subpart A).

\* \* \* \* \*

14. Amend § 450.328(a), (b), and (c) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

**§ 450.330 [Amended]**

15. Amend § 450.330 (a) and (c) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

**§ 450.332 [Amended]**

16. Amend § 450.332(b) and (c) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

**§ 450.334 [Amended]**

17. Amend § 450.334(a) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

**§ 450.336 [Amended]**

18. Amend § 450.336(b)(1)(i), (b)(1)(ii), and (b)(2) by removing “MPO” and adding in its place “MPO(s)” wherever it occurs.

19. Amend § 450.340 as follows:

a. In paragraph (a) adding “or MPOs” after “MPO” wherever it occurs;

b. Adding paragraph (h) to read as follows:

**§ 450.340 Phase-in of new requirements.**

\* \* \* \* \*

(h) States and MPOs shall comply with the MPA boundary and MPO boundaries agreement provisions in 450.310 and 450.312, shall document the determination of the Governor and MPO(s) whether the size and complexity of the MPA make multiple MPOs appropriate, and the MPOs shall comply with the requirements for jointly established performance targets, and a single metropolitan transportation plan and TIP for the entire MPA, before the next metropolitan transportation plan update that occurs on or after [date 2 years after the effective date of the final rule].

**Title 49—Transportation**

**PART 613--METROPOLITAN AND STATEWIDE AND NONMETROPOLITAN PLANNING**

20. The authority citation for part 613 is revised to read as follows:



**Authority:** 23 U.S.C. 134, 135, and 217(g); 42 U.S.C. 3334, 4233, 4332, 7410 et seq.; 49 U.S.C. 5303–5306, 5323(k); and 49 CFR 1.51(f) and 21.7(a).

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